IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3265 of 2007
With
SPECIAL CIVIL APPLICATION No. 3266 of 2007
To
SPECIAL CIVIL APPLICATION No. 3272 of 2007
With
SPECIAL CIVIL APPLICATION No. 3274 of 2007
To
SPECIAL CIVIL APPLICATION No. 3276 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTIBHAI DAHYABHAI PATEL & 11 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1 - 12.
MR PRASHANT MANKAD, AGP. for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 21/02/2007

COMMON JUDGMENT

1 In light of the separate order of even date being made in Special Civil Application No. 3273 of 2007 the learned Advocate for the petitioner is permitted to delete petitioner No.9.

2 These petitions have been preferred praying for following reliefs :

> *"30. The petitioners, therefore, pray that*
>
> *a) The Hon'ble Court be pleased to admit and allow this petition;*
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> *b) The Hon'ble Court be pleased to issue an appropriate writ, order or direction quashing and setting aside the order dated 09.01.2007 and be further pleased to hold that the action of the respondent No.2 in purporting to exercise powers under Sec. 74(D) as well as the order Annexure-B is per-se illegal, unlawful, arbitrary, in breach of the principles of natural justice and violative of Articles 14 and 19(1)(c) of the Constitution of India and is malafide in law.*
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> *c) Pending admission, hearing and/or final disposal of this petition, this Hon'ble Court be pleased to stay and suspend the operation, implementation and execution of the impugned order Annexure-B dated*

09.01.2007 and be further pleased to stay and suspend the continued operation of the said order and be pleased to restrain the respondent No.4 from acting as custodian.

d) That a mandatory order be granted permitting the petitioners to function as members of managing committee of the Kheda District Co-operative Sale & Purchase Union Limited subject to such terms and conditions as may be deemed just and expedient by this Hon'ble Court.

e) Ex-parte ad-interim injunction in terms of prayer paragraphs (c) & (d) above be granted in favour of the petitioners and against the respondents and the same be continued after notice to the respondents.

f) Such other and further reliefs as this Hon'ble Court may deem just and expedient be granted in favour of the petitioners.

g) Costs of this petition be provided for to the petitioners".

3 In light of the fact that the Court is inclined to take, the matters are taken up for final hearing and disposal. **Rule.** The learned Advocate for the respondents is directed to waive service of Rule.

4 It is the say of the petitioners that they constituted the Managing Committee of Kheda District Cooperative Sale and Purchase Union Limited. That vide impugned order dated 9.1.2007 (Annexure-B) the petitioners have been removed viz. the Managing Committee has been removed and a custodian came to be appointed in exercise of powers under Section 74D of the Gujarat Co-operative Societies Act, 1961 (the Act). The principal ground of challenge is violation of principles of natural justice as according to the petitioners the impugned order has been made without granting any opportunity of hearing to the petitioners; and even otherwise, the order suffers from non application of mind as the respondent authority has failed to take into consideration the Scheme of the Act and the Rules before passing the impugned order.

5 Heard learned Advocate for the petitioners and Mr. Prashant Mankad, learned Assistant Government Pleader for the respondent authorities. The facts are not in dispute. Under Section 74D of the Act in respect of any society where a new Committee of Management is, for any reason whatsoever, not elected or having been elected not functioning, within a period of six months after the expiry of the term of office of members of a Committee of management of such Society, the Registrar may by an order in writing appoint a person or a Committee of persons to be the custodian of the society until a new Committee of management is elected or, starts functioning, as the case may be.

6 Therefore, the question would arise as to when does period of six months commence for the purpose of exercising powers under

Section 74D of the Act. Admittedly the last general elections for the Members of the Managing Committee were held on 16.01.2003 and the first meeting of the Managing Committee took place on 7/4/2003. These dates are relevant considering the provisions of Section 74C(2) of the Act wherein it is provided that the members elected on the Committee shall hold office for a period of three years from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new Committee. Therefore, the term of the Committee would expire on 7.4.2006 in light of Section 74C(2) of the Act. The six months period envisaged by Section 74D(1) of the Act would expire on 7.10.2006. The impugned order refers to provisions of Section 145C of the Act to state that the elections of the new Committee are to be held before one month from 7.4.2006 viz., 7.3.2006 and therefore, according to respondent authority, as the elections have not been held and new Committee installed in office, the provisions of Section 74D of the Act become applicable.

7 Section 145C of the Act states, every election shall be held as far as possible one month before the date on which the term of office of the members is due to expire. In the circumstances, a question arises as to what is the legislative intent when the legislature uses phrase “as far as possible” in Section 145C of the Act. This has to be read in conjunction with the use of the word “may” used by the legislature in Section 74D of the Act wherein it is stated that the Registrar may by an order in writing appoint a custodian. Thus there is an inherent indication in the Scheme of

the Act itself that not only is the Registrar vested with a discretion in the matter of appointment of a custodian, but such discretion has to be exercised in light of the fact which has to be ascertained as to whether it was, or was not, possible to hold election one month before the date on which the term of the office of the members was due to expire.

8 The contention on behalf of the respondent authority that Section 74D of the Act does not provide for any requirement of hearing Committee members is required to be recorded to be rejected. Once the provision itself i.e. Section 74D of the Act confers a discretion on the Registrar and Section 145C of the Act provides determination of the fact whether it was possible to hold election or not, such a fact becomes a relevant factor before such discretion is exercised. For this purpose, the requirement of granting a reasonable opportunity of hearing has to be read into the provisions even if not specifically provided for by the legislature as otherwise the existing committee members cannot place on record as to why it was not possible to hold elections, the legislature having provided for a situation where it may not be possible to hold election by use of the phrase 'as far as possible'.

9 There is another angle from which the matter is required to be examined. The Gujarat Specified Co-operative Societies Elections to Committee Rules, 1982 (Election Rules) provides by virtue of Rule 4 of the Election Rules that a provisional list of voters shall be prepared in Gujarati by every society for the year in which general election is due to be held. Under sub – rule (2) of

Rule 4 of the Election Rules four copies of the authenticated provisional list of voters shall be sent by every society to the Collector, through the District Registrar, so as to reach the Collector within 15 days from the date of drawing up the accounts of the year in which the general election is due. Sub-rule (3) of Rule 4 provides for forwarding a list of disqualified members with a copy endorsed to such members so as to enable them to raise objections, if necessary. Sub-rules (4) and (5) of Rule 4 provide as to what Collector is required to do and various time limits are stipulated in the said rules. These rules assume importance in light of the fact that u/s.145D of the Act, it is the Collector who is to conduct election either himself or under his control by the other officers as may be appointed by the Collector.

10 The Registrar is therefore required to pose a question to himself and answer : as to whether the society had complied with the requirements of the Election Rules within the specified time, and if the answer is yes, where has the default occurred. If the answer goes to show that the default is not at the end of the society, it is necessary to exercise discretion and apply his mind as to whether the drastic action of appointment of custodian is required in the circumstances. For posing the question and obtaining the answer it becomes incumbent on the authority to call upon the members of the Managing Committee to explain as to whether there is compliance with the Election Rules and the requirements thereof. Even if he does not do so he is expected to look into the record and ascertain the facts before ascribing any default to the Managing Committee.

11 Though no contention is raised, it can be urged on behalf of the respondent authority that an exercise of this nature is not necessary because regardless of who is at fault, Section 74D of the Act states that a custodian can be appointed if a new committee of management is not elected "for any reason whatsoever". Nothing can be further away from such a proposition if one considers the legislative scheme delineated hereinbefore. If this was the legislative intent there was no requirement of vesting Registrar with any discretion by use of the word "may", nor providing for holding of election before one month "as far as possible". The legislature has therefore provided for emergent situations, extenuating circumstances and the circumstances which are beyond control of the Managing Committee.

12 If it is found from the record that the Managing Committee has taken all the necessary steps as required by the relevant provisions of the Act and the Election Rules for holding the elections it cannot be stated that for default on part of the Collector or any other authority a custodian can be appointed in exercise of powers under Section 74D of the Act. This would render certain portion of Provisions 74D as well as Section 145C of the Act otiose. The position in law is well settled that any interpretation which renders a part of the provisions otiose or superfluous should be avoided. To the contrary an interpretation which harmonises all the parts of the provision, and all the provisions, so as to achieve the object for which the provisions are enacted has to be adopted.

13 Therefore, it is not possible to accept the submission on behalf of the respondent authority that an opportunity of hearing is not required to be granted. Apart from that, as discussed hereinbefore, the authority is required to make an order in accordance with law and that presupposes that all the relevant provisions of the Act and the relevant Rules, including the Election Rules, are borne in mind, considered and order made. As can be seen from the impugned order except for referring to provisions of Section 74D and Section 145C of the Act there is no reference to the Election Rules and the obligations cast on the society as well as the Collector under the Act and the Election Rules. Therefore, even on this ground the impugned order is vitiated for not having taken into consideration the relevant provisions of law relating to holding of election.

14 The aforesaid legal position accords with the view expressed by this Court in case of *Amreli District Co-operative Sale & Purchase Union Ltd. V/s. State of Gujarat (1982) 25(2) GLR 1244.*

15 The impugned order therefore cannot be permitted to operate and the same is quashed and set aside. It will be open to the respondent authorities to initiate fresh action in accordance with law, in the event it is found that the relevant conditions envisaged by the provisions of the Act and the Election Rules stand satisfied and pass a fresh order in accordance with law after affording a reasonable opportunity of hearing to the petitioners.

16 There is one more factor which is peculiar to the facts of the case. During course of hearing it was accepted by learned

Assistant Government Pleader, under instructions, that the elections were not held because the elections were postponed at the behest of the State Government due to heavy rains at the relevant point of time. If this be the situation in the facts and circumstances of the case, there is all the more reason to give effect to the provisions of Section 145C of the Act which talks of holding elections within specified period as far as possible, coupled with the exercise of discretion vested in the authority before exercising powers under Section 74D of the Act so as to make the impugned order bad in law. The respondent authority is not expected to penalise the Managing Committee for an act for which the members of the Committee are not responsible.

17 Before parting it is necessary to record an unpleasant event which has taken place. After the matters were fully heard and the dictation of this judgment commenced the learned Assistant Government Pleader was instructed by Mr.A.B.Patel, Deputy Registrar and Mr. A.C.Pathan, Legal Superintendent, both from the office of Registrar, Co-operative Societies to inform the Court to adjourn the matters on the specious ground that the learned Addl. Advocate General was likely to appear in the matter as a proposal to appoint him had been moved and was awaiting sanction. The request to adjourn the matters at such a belated stage has been rejected. Not only that the entire matters were heard, but the judgment had commenced, when the request was made. Learned Assistant Government Pleader was fair enough to accept the fact that the learned Addl. Advocate General had not been entrusted the matters in absence of any order appointing him

and therefore, he had not made the request. In the circumstances, it is apparent that the gentlemen concerned took a chance and when it was found that the decision of the Court was likely to be adverse to the cause of the respondent authority they instructed the learned Assistant Government Pleader to make a mention as stated hereinbefore. The conduct is reprehensible.

18 The petitions are allowed accordingly. Rule made absolute. There shall be no order as to costs. Registry to place copy of this order in all connected matters.

(D.A. Mehta, J)

m.m.bhatt